

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Diana Keam	Team: Team # 8	CCRB Case #: 200704980	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 04/08/2007 9:10 PM	Location of Incident: § 87(2)(b)	Precinct: 44	18 Mo. SOL 10/8/2008	EO SOL 10/8/2008	
Date/Time CV Reported Tue, 04/10/2007 4:34 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 04/10/2007 4:35 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. Officers			44 PCT
2. POM Jeffrey Heilig	07638	941886	044 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Megan Zarella	05850	942739	044 PCT
2. POM Jose Santory	13049	941398	044 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Jeffrey Heilig	Abuse: PO Jeffrey Heilig stopped § 87(2)(b)	§ 87(2)(b)
B.POM Jeffrey Heilig	Abuse: PO Jeffrey Heilig frisked § 87(2)(b)	§ 87(2)(b)
C. Officers	Abuse: Officers searched § 87(2)(b)	§ 87(2)(b)

Synopsis

On April 10, 2007, § 87(2)(b) filed the following complaint with the CCRB via email. On April 8, 2007, at approximately 9:10PM an officer, identified as PO Jeffrey Heilig from the 44th Precinct, stopped and frisked § 87(2)(b) in the lobby of his apartment building at § 87(2)(b) in the Bronx (Allegations A and B). § 87(2)(b) also stated that officers searched him (Allegation C). § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) agreed to mediate his complaint, pending the CCRB's identification of the officers. In order to positively identify the officers, the CCRB asked § 87(2)(b) to come to the CCRB to view photographs. Despite the CCRB's multiple attempts to schedule him, § 87(2)(b) failed to come to the CCRB to view officer photographs. § 87(2)(g)

§ 87(2)(b)

Summary of Complaint

§ 87(2)(b) is a § 87(2)(b) black male with black hair and brown eyes. He is 5'7" tall and weighs 158lbs. § 87(2)(b) On April 24, 2007, he provided the following statement at the CCRB (enc. 7a-d).

On April 8, 2007, at approximately 9:10PM, § 87(2)(b) arrived at his building at § 87(2)(b) in the Bronx. When § 87(2)(b) reached the front door of his building, he took out his key and used it to open the front door. § 87(2)(b) then walked into the vestibule and through another glass door into the lobby. Just to the left of the second door, there were three young-looking officers in uniform. § 87(2)(b) stated that officers are frequently in his building and he believes that the landlord allows them to be there. § 87(2)(b) acknowledged the officers by nodding his head and continued walking straight through the lobby toward the elevator. When § 87(2)(b) reached the elevator, he pressed the button and as soon as he did so, one of the officers said, "Come here". § 87(2)(b) went to the officers. An officer, identified by the CCRB as PO Jeffrey Heilig, asked § 87(2)(b) for his ID. § 87(2)(b) asked PO Heilig why he needed his ID and told him that he lived in the building. § 87(2)(b) gave his ID to PO Heilig and then PO Heilig and another officer, identified by the CCRB as PO Jose Santory, started to search § 87(2)(b). The officers went into his coat pockets and his front and back pants pockets. In one of his pockets, possibly his coat pocket, § 87(2)(b) had a silver Smith and Wesson landscaping knife. The knife has a flat round blade with a bent tip and is used to cut trees and rope. It is about 3 inches in length when folded and six inches in length when it is extended. PO Heilig took § 87(2)(b)'s knife and put it in his pocket. The officers also took his house keys. The third officer, identified as PO Megan Zarella, stood and watched. The officers asked § 87(2)(b) if he lived in the building. After about ten minutes, § 87(2)(b) became impatient and asked what was taking so long. § 87(2)(b) was very angry that he had been stopped and searched in his own building. The officers told him that they had to check for warrants. While he was waiting, § 87(2)(b) took out a cigarette and lit it. He told the officers that he was going to complain about them and he asked PO Heilig for his name and badge number. PO Heilig told § 87(2)(b) that his name would be on the ticket and then issued him two summonses: one for § 87(2)(b) and one for § 87(2)(b) § 87(2)(b) (enc. 15). After § 87(2)(b) received the summonses, he went upstairs to his apartment. When he reached his apartment, he realized that the officers had not returned his house keys. At that moment, PO Santory came up the stairs and returned § 87(2)(b)'s keys to him. § 87(2)(b)'s knife was not returned. The name of the officer who issued the summonses began with the letters H-e-l.

Results of Investigation

Officer Statements

PO Heilig

PO Jeffrey Heilig is a § 87(2)(b) old white male with brown hair and blue eyes. He is 5'8" tall and weighs 170lbs. PO Heilig has been a member of the New York City Police Department for the last year. On August 27, 2007, he gave the following statement at the CCRB (enc. 9a-b).

On April 8, 2007, PO Heilig worked from 6:00PM to 2:00AM assigned to foot patrol. He was dressed in uniform and was working with the officers on posts 14 and 20. PO Heilig believed those officers were PO Zarella and PO Burckhard. PO Heilig's memo book entry regarding the incident states (enc. 8a-b):

21:00 75V (vertical patrol) § 87(2)(b)

21:15 1 male stopped

21:15 96/98 (summons served, resumed patrol) Smoking in building. Observed signs. Exposed blade.

Summonses

PO Heilig issued summonses § 87(2)(b) to § 87(2)(b) for § 87(2)(b). He also issued § 87(2)(b) summonses § 87(2)(b) for § 87(2)(b). Both summonses were issued on April 8, 2007 at 9:15PM. (enc. 15)

CCRB Statement

PO Heilig, PO Zarella, and PO Burckhard conducted a vertical patrol of § 87(2)(b). The officers walked up to the roof and then down the stairs and into the lobby. PO Heilig stated that § 87(2)(b) is a building in the impact zone of posts 14 and 20 and is regularly patrolled. As PO Heilig and his partners stood in the lobby, § 87(2)(b) entered from the outside of the building and sucked his teeth loudly, as if to get the officers' attention. PO Heilig turned and looked at § 87(2)(b) and saw that he had a lit cigarette in his mouth. § 87(2)(b) was also holding a large keychain with a number of keys on it. Also on the keychain was an exposed blade. PO Heilig described the knife as an unusual looking silver Smith and Wesson model with a curved blade. He estimate that the blade was about three or four inches long. Inside the lobby of § 87(2)(b) there are several signs posted that say "No Smoking". PO Heilig approached § 87(2)(b) and said, "Excuse me sir, do you see the signs? You're not allowed to be smoking in the building." § 87(2)(b) then said to PO Heilig, "Oh, well it's my building." § 87(2)(b) was adamant that the officers could not stop him because he lived in the building. After speaking with § 87(2)(b) for about 30 seconds, PO Heilig decided to frisk him for his safety. He stated that, because of the exposed blade on § 87(2)(b)'s keychain, he thought that § 87(2)(b) could have other weapons on him as well. When PO Heilig was asked to describe exactly what he meant by "frisk", he stated that a frisk is a quick pat-down of the outermost garments meant to feel for bulges or rigid or hard objects that could be possible weapons. During a frisk, there would be no need to go into an individual's pockets unless one felt a bulge or hard object that one suspected to be a weapon. PO Heilig stated that he did not feel any hard objects or bulges on § 87(2)(b)'s person, and therefore, did not go into his pockets. After frisking § 87(2)(b) PO Heilig asked him for his license. § 87(2)(b) provided the license and PO Heilig issued him two summonses: one for § 87(2)(b) and the other for § 87(2)(b). PO Heilig confiscated the knife and vouchered it. § 87(2)(b). PO Zarella and PO Burckhard did not interact with § 87(2)(b). They simply observed PO Heilig and backed him up.

PO Zarella

PO Megan Zarella is a § 87(2)(b) old white female with blonde hair and blue eyes. She is 5'7" tall and weighs 120lbs. PO Zarella has been a member of the New York City Police Department for the last year. On September 10, 2007, she provided the following statement at the CCRB (enc. 11a-b).

On April 8, 2007, PO Zarella worked from 5:35PM to 2:05AM assigned to foot post 14 within the confines of the 44th Precinct. She was dress in uniform and her partner was PO Heilig. PO Zarella did not have any memo book entries regarding this incident.

PO Zarella, PO Heilig, and PO Santory were conducting a vertical patrol in § 87(2)(b). Following the vertical patrol, the officers stood in the lobby. As they did so, the complainant, known to the CCRB as § 87(2)(b) entered the lobby smoking a lit cigarette. PO Zarella stated that there are signs clearly posted in the lobby of the building that state "No Smoking". PO Heilig approached § 87(2)(b) and informed him that there was no smoking in the lobby. § 87(2)(b) stated that he could smoke in the building because he pays rent for his apartment. § 87(2)(b). As § 87(2)(b) spoke, the officers noticed that he had an

exposed blade clipped to a pants pocket. PO Zarella could not recall what side the blade was on and could not recall what it looked like. PO Heilig took the blade from § 87(2)(b) and patted down the outside of his pants pockets to feel for any other possible weapons. PO Heilig did not put his hands inside of any of § 87(2)(b)'s pockets. PO Heilig asked § 87(2)(b) for his ID and then issued him two summonses. One summons was for § 87(2)(b) and the other was for § 87(2)(b). PO Zarella and PO Santory observed the interaction and did not frisk or search § 87(2)(b).

PO Santory

PO Jose Santory is a § 87(2)(b) old Hispanic male with black hair and brown eyes. He is 5'6" tall and weighs 220lbs. PO Santory has been a member of the New York City Police Department for the last year. On September 27, 2007, he provided the following statement at the CCRB (enc. 13a-b).

On April 8, 2007, PO Santory worked from 5:30PM to 2:05AM assigned to an Impact foot post 26 within the confines of the 44th Precinct. He was dressed in uniform and was working with PO Heilig and PO Zarella. PO Santory's memo book entry regarding this incident states (enc. 12a-b):

21:00 10-75V (vertical patrol) @ § 87(2)(b)
21:28 98 (resumed patrol), Heilig 96x2 (two summonses issued)

PO Santory, PO Heilig, and PO Zarella were in the lobby of § 87(2)(b) when § 87(2)(b) entered the lobby smoking a cigarette. The cigarette was lit. PO Santory stated that smoking is not permitted in the lobby of the building. PO Heilig approached § 87(2)(b) and PO Santory and PO Zarella backed him up. § 87(2)(b) was several feet away from the officers at first. When they approached, PO Heilig first noticed that § 87(2)(b) had a silver knife with a hook-shaped blade hanging from a bombardier clip along § 87(2)(b)'s waistband. The knife was about 3 or 4 inches in length. Also with the knife were several keys. PO Heilig took the knife from § 87(2)(b) and then he patted down his pockets to be sure that he had no other weapons on him. PO Heilig did not put his hands inside of § 87(2)(b)'s pockets. When asked if either he or PO Zarella frisked § 87(2)(b) PO Santory said, "I don't think I did and I don't think she did. I think [PO Heilig] is the one that did. I'm not 100% sure." PO Santory could not recall how or when PO Heilig obtained § 87(2)(b)'s ID, but after he obtained the ID the officers stepped a few feet away from § 87(2)(b) and PO Heilig issued him two summonses: one for § 87(2)(b) and one for § 87(2)(b). After § 87(2)(b) was issued the summonses, he took the elevator to his apartment. PO Santory stated that § 87(2)(b) was rude and belligerent throughout the incident and he told the officers that he knew about CCRB.

PO Burckhard

PO Joseph Burckhard is a § 87(2)(b) old white male with brown and blue eyes. He is 5'9" tall and weighs 170lbs. PO Burckhard has been a member of the New York City Police Department for the last year. On September 11, 2007, the CCRB interviewed PO Burckhard, because PO Heilig identified him as an officer who was present during the incident. Following PO Burckhard's interview, the CCRB learned that he was not present during the incident. § 87(2)(g)

Police Documents

Roll Call

The Tour 3 roll call for the 44th Precinct confirms that PO Heilig, PO Zarella, and PO Santory were all working on the date of incident and were assigned to Impact foot posts. (enc. 16a-k)

Criminal History of § 87(2)(b)

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)

Status of Summons

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]

Officers' CCRB History

PO Heilig has no substantiated CCRB allegations. (enc. 3)

Conclusions and Recommendations

Officer Identification

§ 87(2)(b) provided the CCRB with the numbers of the summonses he received and the first three letters of the last name of the officer who issued those summonses. § 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]

§ 87(2)(b) stated that three officers were present during the incident. He described PO1 as a stocky Hispanic male in uniform, 5'7" to 5'9" tall, PO2 as a Hispanic male in uniform, 5'6" to 5'7" tall, and thinner than PO1. PO3 was a Hispanic female 5'4" to 5'5" tall. § 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Undisputed Facts

It is not disputed § 87(2)(b) had a knife on his person or that he had a lit cigarette in the lobby of his building.

Disputed Facts

§ 87(2)(g)
[REDACTED]
[REDACTED]

Assessment of Evidence and Determination of Fact

§ 87(2)(b) alleges that the officers stopped him for no apparent reason and asked for his ID. All three officers stated that § 87(2)(b) entered the building smoking a lit cigarette and that that was the reason that PO Heilig stopped him. According to § 87(2)(b) he did not light a cigarette until after PO Heilig had already stopped him. § 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

§ 87(2)(b) stated that his knife was in his pocket. He could not recall in exactly which pocket the knife had been. PO Heilig stated that § 87(2)(b) had the knife clipped to his waistband and that it was plainly visible to him as he approached § 87(2)(b) about the lit cigarette. PO Santory and PO Zarella also

both supported PO Heilig's statement. § 87(2)(g)

§ 87(2)(b) stated that the two male officers put their hands inside his coat pockets and pants pockets. § 87(2)(g)

PO Heilig stated that after he unclipped the knife from § 87(2)(b)'s waistband, he patted him down on the outside of his clothing to be sure he had no other weapons. He did not put his hands inside § 87(2)(b)'s pockets. PO Heilig stated that he was the only officer who frisked § 87(2)(b) and also stated that the other two officers did not search him either. PO Zarella and PO Santory corroborated PO Heilig's statement. § 87(2)(g)

Allegation A: PO Jeffrey Heilig stopped § 87(2)(b)

§ 87(2)(g)

According to Title 17 of the New York City Administrative Code, "Smoking is prohibited in all enclosed areas within public places... (enc. 2a-c)" § 87(2)(g)

Allegation B: PO Jeffrey Heilig frisked § 87(2)(b)

§ 87(2)(g)

Patrol Guide Procedure 212-11 regarding stop and frisks states that a uniformed member of the service may frisk an individual "if [he or she] reasonably suspects [they] or others are in danger of physical injury" (enc. 1). § 87(2)(g)

Allegation C: Officers searched § 87(2)(b)

§ 87(2)(b) stated that both PO Heilig and PO Santory put their hands inside of his pockets and that that was how they found the knife. All three officers were consistent in stating that § 87(2)(b) was only frisked, not searched and that the knife was plainly visible to them and clipped to § 87(2)(b)'s waistband. § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: